

EXHIBIT “1”

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7 Attorneys for Defendant
Burbank Police Department Officer Gunn
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 PRESTON SMITH, an individual;

13 Plaintiff,

14 vs.
15

16 CITY OF BURBANK; BURBANK
17 POLICE DEPARTMENT;
BURBANK POLICE DEPARTMENT
18 OFFICER GUNN; BURBANK
POLICE DEPARTMENT OFFICER
19 BAUMGARTEN; BURBANK
POLICE DEPARTMENT OFFICER
20 EDWARDS; AND DOES 1
THROUGH 100, INCLUSIVE
21

22 Defendants.
23

Case No. CV 10-8840 VBF (AGRx)

Honorable Valerie Baker Fairbank

**STIPULATION FOR AN ORDER
STAYING THE CASE, VACATING
THE TRIAL, AND VACATING
ALL PRE-TRIAL DATES**

Trial Date: November 8, 2011
Time: 8:30 a.m.
Courtroom: 9

24 TO THE CLERK OF THE COURT, ALL INTERESTED PARTIES AND
25 THEIR ATTORNEYS OF RECORD:

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28 //

1 Plaintiff PRESTON SMITH (hereinafter "Plaintiff") and Defendants CITY
2 OF BURBANK, BURBANK POLICE DEPARTMENT, OFFICER
3 BAUMGARTEN, OFFICER EDWARDS, and OFFICER GUNN (hereinafter
4 "Defendants"), through their respective attorneys of record, hereby enter into the
5 following stipulation:

6 1. This litigation relates to the April 10, 2009 arrest of Plaintiff
7 PRESTON SMITH by officers from the Burbank Police Department.

8 2. On April 29, 2009, Plaintiff PRESTON SMITH pled guilty to
9 violating California Penal Code § 148(a)(1) as a result of the arrest. This
10 conviction has not been expunged, withdrawn, or overturned.

11 3. Counsel for all parties have been advised and believe that the Los
12 Angeles Sheriff's Department is currently conducting a criminal investigation
13 into the allegations made by Mr. Smith concerning his arrest.

14 4. Plaintiff recently noticed the depositions of all three individual
15 Defendants. The depositions were noticed for March 3, 2011 and March 8, 2011.

16 5. After meeting and conferring on these issues, all counsel agree that
17 the individual Defendants cannot be deposed until the Los Angeles Sheriff's
18 Department has completed its investigation, because of the officers' Fifth
19 Amendment rights.

20 6. The parties are not certain when the investigation conducted by the
21 Los Angeles Sheriff's Department will be completed. Furthermore, the parties
22 cannot control when the investigation of the Los Angeles Sheriff's Department
23 will be completed.

24 7. To allow for the completion of this investigation without interfering
25 with the Fifth Amendment rights of the individual Defendants, the parties
26 respectfully request that the Court vacate all trial and pretrial dates until the
27 investigation has been completed.

28 8. The parties disagree as to the issues set forth in paragraphs 9 and 10

1 of this Stipulation. The parties' respective positions are set forth below.

2 9. Defendants request that the Court stay all proceedings with the
3 exception that the Court allow the filing and hearing of motions pursuant to Rule
4 12(c) of the Federal Rules of Civil Procedure, focused on whether Plaintiff's
5 claims are barred by his conviction for violating California Penal Code §
6 148(a)(1) under the doctrine set forth in *Heck v. Humphrey*, 512 U.S. 477, 114
7 S.Ct. 2364 (1994), hereinafter "the *Heck* motions". Defendants contend that the
8 *Heck* motions will be based upon the pleadings in this action and the court file in
9 the underlying criminal action against Plaintiff PRESTON SMITH. Defendants
10 further contend that Plaintiff does not need to conduct discovery to oppose the
11 *Heck* motions.

12 10. Plaintiff requests that the Court stay all proceedings in this matter
13 until the investigation has been completed. Plaintiff contends that the depositions
14 of the individual Defendants must be completed before Plaintiff can oppose the
15 *Heck* motions.

16 11. If the Court is inclined to agree with the position set forth by
17 Defendants in paragraph 9 of this Stipulation, the parties propose a hearing date
18 of May 16, 2011 for the *Heck* motions.

19 12. The parties jointly propose a schedule in which the parties will
20 submit a Joint Status Report to this Court by May 16, 2011 advising the Court as
21 to whether the investigation being conducted by the Los Angeles Sheriff's
22 Department has been completed. The parties will submit further Joint Status
23 Reports every 60 days thereafter until the investigation being conducted by the
24 Los Angeles Sheriff's Department has been completed.

25 13. Plaintiff's counsel is scheduled for surgery on March 9, 2011, and
26 has been advised by his surgeon, Dr. Andrew DaLio, that he will not be able to
27 work for a minimum of four weeks following surgery. Should the Court schedule
28 the *Heck* motions without providing Plaintiff an opportunity to depose the

1 Defendant police officers, and in view of counsel's extended recovery period
2 following surgery, Plaintiff proposes May 16, 2011 as the hearing date for the
3 Heck motions. Defendants are amenable to this request.

4 The parties respectfully request that the Court enter an Order consistent
5 with this Stipulation.

6
7 Dated: February 25, 2011

LAW OFFICES OF MANUEL H. MILLER
A Professional Corporation

8
9
10 By 

11 Max A. Sauler
12 Attorney for Plaintiff
13 Preston Smith

14 Dated: February 28, 2011

LAWRENCE BEACH ALLEN & CHOI, PC

15
16 By 

17 Nathan A. Oyster
18 Attorneys for Defendant
19 Burbank Police Department Officer Gunn

20 Dated: February __, 2011

DENNIS A. BARLOW
City Attorney

21
22 By 

23 Carol A. Humiston
24 Sr. Assistant City Attorney
25 City of Burbank, Burbank Police
26 Department, Burbank Police Officers
27 Adam Baumgarten and Michael Edwards
28

1 Defendant police officers, and in view of counsel's extended recovery period
2 following surgery, Plaintiff proposes May 16, 2011 as the hearing date for the
3 Heck motions. Defendants are amenable to this request.

4 The parties respectfully request that the Court enter an Order consistent
5 with this Stipulation.

6
7 Dated: February __, 2011

LAW OFFICES OF MANUEL H. MILLER
A Professional Corporation

8
9
10 By _____
11 Max A. Sauler
12 Attorney for Plaintiff
13 Preston Smith

14 Dated: February __, 2011

LAWRENCE BEACH ALLEN & CHOI, PC

15
16 By _____
17 Nathan A. Oyster
18 Attorneys for Defendant
19 Burbank Police Department Officer Gunn

20 Dated: February 27, 2011

DENNIS A. BARLOW
City Attorney

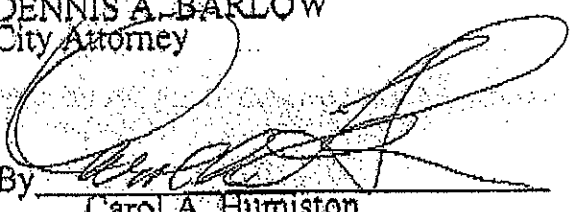
21
22 By  _____
23 Carol A. Humiston
24 Sr. Assistant City Attorney
25 City of Burbank, Burbank Police
26 Department, Burbank Police Officers
27 Adam Baumgarten and Michael Edwards
28

EXHIBIT “2”

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JS-6

Attorneys for Defendant
Burbank Police Department Officer Gunn

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PRESTON SMITH, an individual;

Plaintiff,

vs.

CITY OF BURBANK; BURBANK
POLICE DEPARTMENT;
BURBANK POLICE DEPARTMENT
OFFICER GUNN; BURBANK
POLICE DEPARTMENT OFFICER
BAUMGARTEN; BURBANK
POLICE DEPARTMENT OFFICER
EDWARDS; AND DOES 1
THROUGH 100, INCLUSIVE

Defendants.

Case No. CV 10-8840 VBF (AGR~~x~~)

Honorable Valerie Baker Fairbank

**ORDER STAYING THE CASE,
VACATING THE TRIAL, AND
VACATING ALL PRE-TRIAL
DATES**

Trial Date: November 8, 2011
Time: 8:30 a.m.
Courtroom: 9

TO THE CLERK OF THE COURT, ALL INTERESTED PARTIES AND
THEIR ATTORNEYS OF RECORD:

Pursuant to the parties' Stipulation for an Order Staying the Case, Vacating
the Trial, and Vacating all Pre-trial Dates, IT IS HEREBY ORDERED THAT:

1 1. All trial and pre-trial dates in this matter are hereby vacated.

2 2. This matter is stayed [in its entirety] [with the exception of
3 proceedings related to paragraph 4 of this Order].

4 3. The parties shall submit a Joint Status Report to this Court by May
5 16, 2011 advising the Court as to whether the investigation being conducted by
6 the Los Angeles Sheriff's Department has been completed. The parties will
7 further submit Joint Status Reports every 60 days thereafter until the investigation
8 being conducted by the Los Angeles Sheriff's Department has been completed.

9 4. Defendants are permitted to file motions pursuant to Rule 12(c) of
10 the Federal Rules of Civil Procedure, focused on whether Plaintiff's claims are
11 barred by his conviction for violating California Penal Code § 148(a)(1) under the
12 doctrine set forth in *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364 (1994),
13 hereinafter "the *Heck* motions". The *Heck* motions shall be heard on May 16,
14 2011.

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16 IT IS SO ORDERED:

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19 Dated: March 1, 2011



20 Hon. Valerie Baker Fairbank
21 United States District Judge
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EXHIBIT “3”

~~Page 20~~ *Law Offices of*

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April 20, 2011

VIA FAX/U.S. MAIL

Mr. Nathan A. Oyster, Esq.
LAWRENCE BEACH ALLEN & CHOI, PC
100 West Broadway, Suite 1200
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Ms. Carol A. Humiston, Esq.
City of Burbank, City Attorney
275 Olive Avenue
Burbank, California 91502

Re: Smith v. City of Burbank, et al.

Dear Mr. Oyster and Ms. Humiston:

I am in receipt of your Motion for Summary Judgment and Motion for Judgment on the Pleadings. I will need to depose the defendant police officers to adequately respond to these Motions. In view of the fact that the Internal Investigation as to the officers is ongoing, I am assuming that you will not permit them to be deposed. If I am wrong, please let me know, and I will notice their depositions.

Assuming that you will not permit me to depose the police officers while the internal investigation is proceeding, I will not be able to complete discovery in this matter prior to the hearing of the Motions and Plaintiff's time to response. *In that event, I request that you either continue your motions or take them off calendar, pending completion of discovery.* This request is being made pursuant to F.R.C.P. Rule 56 (d), which provides that:

"When facts are unavailable to the nonmovant, if a movant shows by affidavit or declaration that, for specific reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order."

Failing to hear from you by the close of business tomorrow, April 21, 2011, I will apply to the court for an order pursuant to Rule 56 (d).

Very truly yours,

Law Offices of Manuel H. Miller
A Professional Corporation

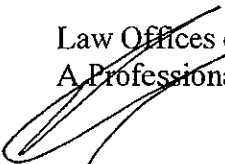

Max A. Sauler
MAS:

EXHIBIT “4”

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April 21, 2011

VIA FACSIMILE & U.S. MAIL

Max Sauler
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Re: Smith, Preston v. City of Burbank, et al.
U.S.D.C. Case No. CV 10-8840 VBF (AGRx)


Dear Mr. Sauler:

I am in receipt of your April 20, 2011 correspondence. Because Officer Gunn has filed a Motion for Judgment on the Pleadings, Rule 56 is inapplicable to his pending Motion. I am unable to grant your request to continue Officer Gunn's Motion or to take the Motion off-calendar. Furthermore, the stay of the case precludes Officer Gunn's deposition from going forward.

If you wish to discuss these issues in further detail, please contact me at your convenience.

Very truly yours,

LAWRENCE BEACH ALLEN & CHOI, PC



Nathan A. Oyster

NAO:cl

cc: Carol A. Humiston, Esq.